FEDERAL POLICIES AFFECTING AMERICAN WORKERS

BY

Sar A. Levitan and Isaac Shapiro
The Center for Social Policy Studies
The George Washington University

* This analysis is based on the upcoming book, Protecting American Workers: An Assessment of Government Programs, by Sar A. Levitan, Peter E. Carlson, and Isaac Shapiro. The book will be published by The Bureau of National Affairs in July 1986.

J842-37

FEDERAL POLICIES AFFECTING AMERICAN WORKERS

Federal regulations assist American workers throughout their employment careers, from when they are hired until they retire. Employment and training programs help those who are having trouble securing jobs, while unemployment insurance cushions the blow to those who lose jobs. On the job, Federal laws ensure minimally accepted wages, establish safer work environments, and provide a fair opportunity for advancement. Statutory bargaining rights permit employees to band together to obtain additional protections and benefits; union-negotiated benefits often are adopted by non-union employers as well. When a worker retires, Federal laws provide income support either through social security or promoting a strong private pension system.

A web of Federal protections has developed since the New Deal and benefits almost all American workers, ranging from the low-income individual receiving job training to the blue collar worker laboring in a safer environment to all workers who are guaranteed substantial income support once they retire.

These protections have eroded dramatically in recent years. The basic **federal laws protecting workers have not been eliminated; instead, lax administration, budgetary cuts, and inadequate legislative oversight have undermined the protection the laws offer. Consequently, training opportunities for the unskilled and unemployed have diminished, working conditions have deteriorated, workers' rights have been undercut, and the unemployed and the retired have less income security. Specifically:**

Federal funding of employment and training assistance has dropped from $9.5 billion in fiscal 1981 to $5.6 billion in fiscal 1986.

The percentage of the unemployed receiving unemployment insurance fell to a historic low of 34 percent in 1985.

After adjusting for inflation, the minimum wage has declined by 26 percent since January 1981, and is now at its lowest real level since 1955.

The enforcement of health and safety regulations has deteriorated. Also, during the first five years of the Reagan administration, only two standards that increased health protection were issued, as compared to nine such standards in the Carter years.

The Equal Employment Opportunity Commission's enforcement of anti-discrimination laws has been lax. Top administration officials now call for the elimination of affirmative action.

The National Labor Relations Board has modified the direction of key policies, undermining union organizing efforts and basic worker rights. NLRB's case backlog has risen considerably.

New legislation strengthened the pension system, but trouble areas remain. Employers are finding loopholes in pension termination provisions and tax incentives for individual pension plans are not well targeted.

This paper discusses the benefits and costs of federal worker protections and the effects of their recent erosion. It concludes with a brief summary of the policy changes necessary to restore worker protections to an adequate level of effectiveness.

Training and Employment

For more than two decades, the federal government has played a vital role in providing training, job search assistance, and jobs for those who experience difficulty finding employment. By training and employing workers in new jobs, this assistance has boosted the income of program participants and has reduced transfer payments. In addition, public service jobs, provided during periods of high unemployment, produced services beneficial to society.

Many individuals face ongoing difficulty competing in the labor market during good times as well as in periods of economic downturn. These individuals may have failed or been failed by the schools. They may lack skills or adequate

information about available positions, or they may be the victims of discrimination. In many cases, the shortage of job opportunities may be the determining factor. The federal government has assumed the role of funding programs targeted towards the labor market problems of the poor and deficiently educated. These programs provide a second chance for those who are not in the mainstream labor market and who private employers have shown considerable reluctance to hire.

The federal government first assumed a major role in employing the disadvantaged as part of the anti-poverty efforts of the 1960s. New programs arose in an uncoordinated fashion and were consolidated in 1973 under the Comprehensive Employment and Training Act (CETA). The 1970s also saw the first major government funding of public service employment since the 1930s. In the 1980s, the Job Training Partnership Act (JTPA) established a job training program with a greater emphasis on state and private sector control.

The number of individuals enrolled in employment and training programs has always been too low to offset the economic effects of demographic trends, international competition, and domestic macroeconomic forces. The success or failure of employment and training programs should, therefore, not be measured by trends in the overall unemployment rate. These efforts should instead be assessed by their effect on the individual participants and, consequently, by their net economic benefit to society, independent of the effect of broader economic forces.

For the most part, employment and training programs have been reasonable public investments. A 1981 comprehensive evaluation estimated that each dollar spent on institutional training resulted in a $1.14 increase in income per participant. In the limited cases where long-term

training was an available option, the results were especially encouraging. The Job Corps, which provides basic education and skill training in residential settings, has an outstanding record with young people from the most disadvantaged backgrounds.

Participants in public service employment programs, on average, experienced greater post-enrollment earnings than those in control groups. Factoring in the output of enrollees during their training raises the benefits from the programs considerably.[1]

Over twenty years of experience with federal employment and training programs have led to program improvements. Previous experience has also led to the development of efforts such as Massachusett's new program to help AFDC recipients move off the welfare roles and into productive employment. The successful approach used in this program can be adopted by other states.

Funding Cut

Rather than building upon this knowledge base, policy initiatives in the 1980s substantially undermined most training programs and completely eliminated public service employment. Adjusted for inflation, total federal funding of employment and training programs has dropped 50 percent between 1981 and 1986 (Table 1).

Table 1. Employment and training outlays have fallen sharply
(in millions)

	Fiscal 1981	Fiscal 1986 (estimate)
Block grants to states	$ -0-	$ 1883
General CETA programs	3381	-0-
Summer youth employment	769	775
Assistance to dislocated workers	-0-	200
Job Corps	540	614
Older Americans employment	277	323
Work incentive program	381	180
Other training programs	690	262
Federal-state employment service	804	984
Public service employment	2399	-0-
Targeted Jobs Tax Credit (tax expenditure)	305	420
Total (current dollars)	9546	5641
Total (1986 dollars)	11246	5641

Source: U.S. Department of Labor, 1982 Employment and Training Report, Office of Management and Budget, budget documents for fiscal 1983, 1987.

New policy directives have also undermined employment and training programs. The character of the programs has shifted from an emphasis on the needs of the poor and the unemployed to an emphasis on the labor market needs of employers. JTPA turned responsibility for program administration over to the states, and there has been little federal monitoring or control. Federal technical assistance, program evaluation, and research have been virtually eliminated, while follow-up data collection has been blocked by the Office of Management and Budget's refusal to allocate funds for that purpose. The shift to a placement rate standard of performance directs resources away from those most in need of training to those who require little assistance.

The decline in the unemployment rate since 1983 does not justify the cutback in federal employment and training programs. Even after more than three years of economic growth, the unemployment rate remains high relative to historical standards. The poor and low wage workers have not fully

shared in the recent economic progress and still need a helping hand. Intense international market competition, technological change, and shifts in consumer demand will continue to generate pockets of economic dislocation. An adequately trained workforce is a necessity if the United States is going to compete successfully in international markets. Given the current budget deficit, a large increase in employment and training programs may be unlikely, but failing to strengthen these programs would be shortsighted. More individuals would remain in poverty, welfare costs would rise, and valuable human resources would be wasted.

Unemployment Insurance

The federal-state unemployment insurance system was established under the Social Security Act of 1935 as a "first line of defense" for workers who have involuntarily lost their jobs. Its primary objective is to provide an income cushion to workers forced into temporary idleness, but the system also acts as a countercyclical program by replacing a portion of lost earnings during a recession. Unemployment Insurance (UI) has been largely successful, providing needed income support to millions of the unemployed each year.

Before the enactment of the federal-state UI system, income support for unemployed workers rarely existed. The 1935 legislation established the basic UI program in which the federal government sets broad standards, monitors the financing system, and pays for administrative costs, while state governments are responsible, within federal guidelines, for program administration and for taxing employers to fund the program's benefits.

As the UI system evolved, Congress provided additional assistance to workers during periods of high unemployment. In 1970 Congress enacted a

permanent extended benefits program paid with federal and state funds. During the recessions since 1970 the federal government also enacted temporary supplemental benefit programs, paid out of federal general revenue funds, that provided benefits beyond the state and extended benefits programs. The regular federal-state system remained, however, the basic vehicle for government support of workers who lost their jobs. Between 1971 and 1984 the basic state program provided 85 percent of UI benefits.

In fiscal 1985 over 8 million individuals received regular state weekly benefits averaging $122 for 13 weeks. UI payments replace, on average, 35 percent of a recipient's prior wage. UI recipients are more likely to be older, male, white, and from middle income families than all jobless persons. The system thus benefits a category of Americans who are often perceived as being neglected by government programs.

Although 97 percent of all wage and salary employees are now potentially protected by unemployment insurance, only one of every three employed persons in 1985 received benefits. Only job losers (as opposed to job leavers, reentrants, and new entrants into the labor force) are eligible to receive benefits, and tightened eligibility restrictions disqualify many of the unemployed from receiving benefits.

Criticisms of the UI system center on its costs and on charges that it increases unemployment. Total outlays for UI amounted to $31 billion in fiscal 1983 and even in the third year of recovery the UI price tag still remained at $17 billion. UI increases unemployment because the compensation reduces the cost to workers of being unemployed; because employers are more willing to lay off workers temporarily as they know the availability of UI benefits reduces the chances that an employee will seek

work elsewhere; and because the UI payroll tax raises the cost of labor. The Congressional Budget Office estimated that during periods of low unemployment, UI benefits may increase the unemployment rate roughly 10 to 15 percent, as compared to about 5 percent during recessions.[2] On the other hand, by replacing a portion of an unemployed worker's earnings, UI benefits have a countercyclical effect, helping to stabilize aggregate demand and, therefore, output and employment during a recession.

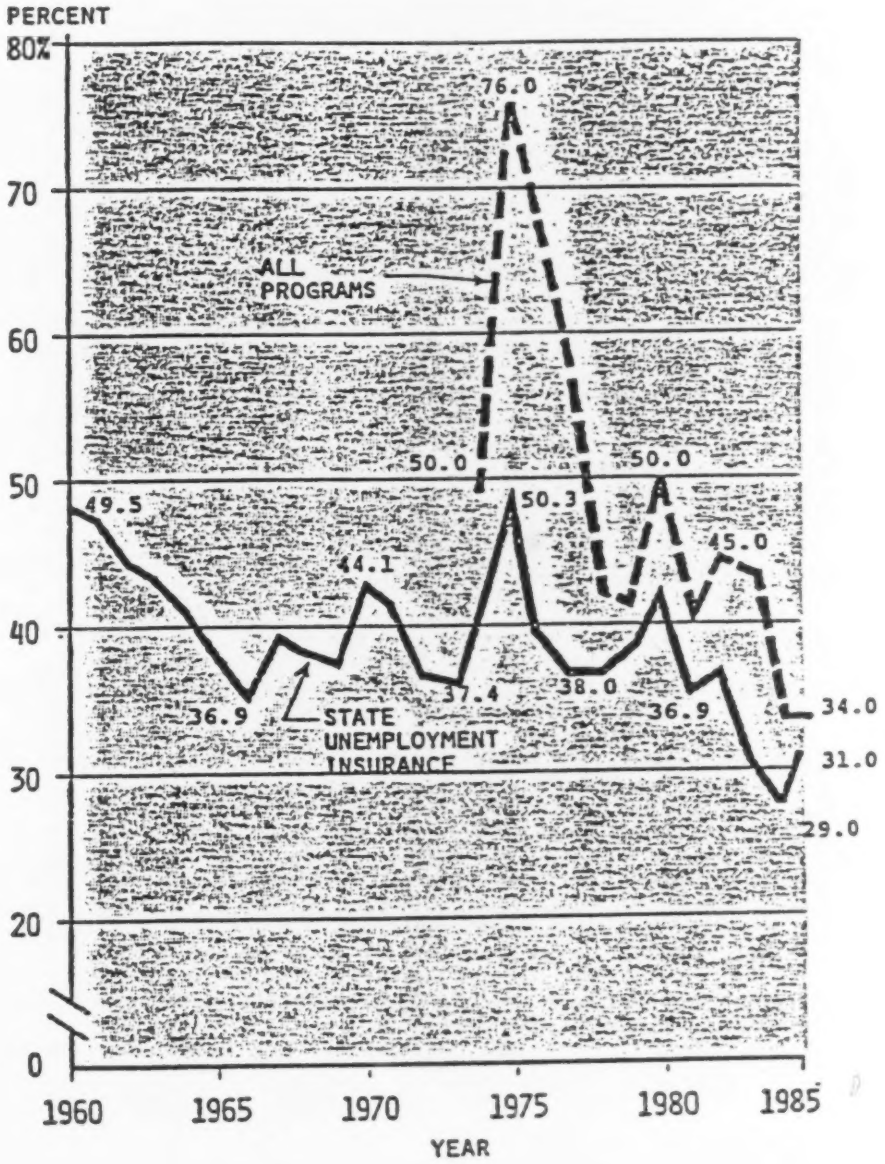
Less recipients, less benefits

Given the historically low percentage of the unemployed who now receive UI benefits, the estimates for job loss most likely overstate the current work disincentive effect. In 1975, about 76 percent of the unemployed were receiving some form of unemployment insurance at any given time. By 1985, the corresponding figure had dropped to 34 percent (Figure 1). The reasons for this fall include demographic and economic trends, as well as stricter state requirements, but federal policy is also partially responsible. Some of the state eligibility restrictions resulted from federal prodding and the extended and federal supplemental benefits programs, which provide assistance beyond the basic UI program for the long-term unemployed, have been substantially weakened or terminated.

[Figure 1 here]

The 1981 Omnibus Reconciliation Act severely tightened the extended benefits trigger. In April 1986, only the residents of Alaska, Idaho, and Puerto Rico were eligible for extended benefits, even though 8.3 million persons were unemployed, including 4.0 million job losers and 1.1 million individuals idle for over half a year. The unemployed in many states with exceptionally high unemployment rates, the presumed target of the program, were not receiving

Figure 1. The percent of the unemployed receiving UI benefits has declined since 1975



Source: U.S. Department of Labor and House Ways and Means Committee.

extended benefits. The federal supplemental benefits program enacted in the most recent recession, which was allowed to expire in 1985, was weaker than past programs. Consequently, during the 1982-1983 recession, even though there were 2.2 million more job losers than in the 1974-1975 recession, total extended and supplementary benefits in nominal dollars were cut almost in half.

Another disturbing trend in the UI system is the erosion of the taxable wage base. This erosion reduces the funds available for paying benefits and increases pressures to cut UI costs. The ratio of taxable wages to the total wages of covered employees has declined from 98 percent in 1940 to 36 percent in 1985. Only the first $7,000 of an employee's earnings is now subject to federal UI taxes, while the median state base is $8,000. In comparison, the social security taxable wage base ($42,000 in 1986) is more than five times as high. A low base discriminates against low wage employees, as employers pay the same amount of tax for all workers earning at or above the minimum level, even though higher wage workers receive substantially more in benefits.

The federal government should resume its traditional level of support for workers who have lost their jobs. The UI system has generally achieved the objective of providing temporary income support to job losers; today, in contrast, a low percent of the unemployed receive unemployment insurance. The burdens of industrial revitalization and of adjustments to international competition should not fall disproportionately upon workers forced into idleness. In order to restore the strength of the UI system, the taxable wage base should be raised and extended and supplemental UI benefits for the long-term unemployed should again be provided at reasonable levels.

Minimum Wage

Since the passage of the Fair Labor Standards Act of 1938, the federal government has maintained a floor under wages in order to provide a minimal socially acceptable standard of living for all protected workers. This floor has especially helped the working poor, but also has provided additional income to other families. The minimum wage has remained at $3.35 an hour since January 1981, despite the 26 percent rise in the cost of living.

The recent erosion of the minimum wage is in sharp contrast to the general strengthening of this worker protection that had occurred since 1938. The basic wage level had been raised and coverage had been expanded, over 90 percent of nonsupervisory employees are now subject to minimum wage laws.

According to the Bureau of Labor Statistics data, in 1984, the hourly earnings of nearly 8 million salaried and hourly workers were at or below the minimum wage level. Six million more received wages just above this level. Although young workers are disproportionately represented among minimum wage workers, almost half of minimum wage workers are adults. More than one of every four minimum wage workers heads a household. Roughly three-quarters of minimum wage workers are concentrated in the service and retail trade industries.

The income effects from the minimum wage are substantial. For example, the Department of Labor estimated that the 1981 raise in the minimum wage potentially assisted 5.5 million workers at an annual benefit of $2.2 billion. These higher wages help some escape poverty and lessen its severity for others. For those minimum wage earners above the poverty line, the extra income also can be essential. A teenager trying to earn money for school can benefit greatly, as can a multiearner family that may

be trying to scrape together enough money to purchase more than the bare necessities.

An effective minimum wage also encourages individuals to work rather than to rely on welfare. This incentive is good both for the individuals involved and for society. Individuals benefit from the satisfaction of helping themselves, and their possibilities for future advancement are enhanced. Society benefits from the increase in output and the reduction in welfare costs.

The traditional argument raised against the minimum wage is that it prices some individuals out of the labor market. The congressionally-mandated Minimum Wage Study Commission estimated that a 10 percent increase in the minimum wage decreases teenage employment by about 1 percent. The adult labor market is not as sensitive to minimum wage changes, both because youth workers are likely to be laid off before adult workers and because a smaller proportion of adults work at the minimum.

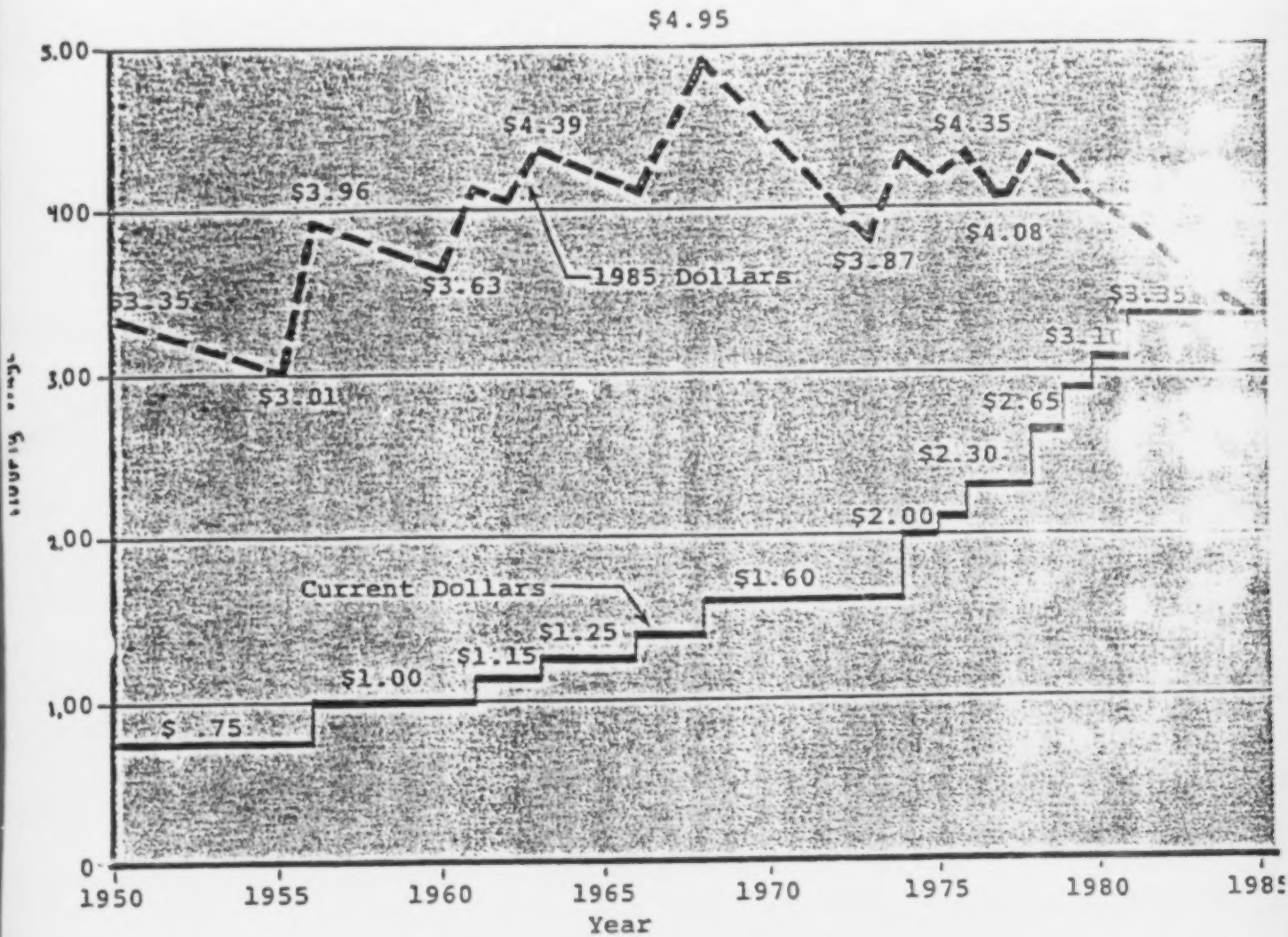
As the minimum wage is raised, the employment loss increases, but so does the income gain of those who keep their jobs. The task for Congress is to strike the right balance between providing a reasonable wage floor and minimizing the loss of jobs. Currently the minimum is set too low, undermining its positive influence on incomes and work incentives.

Declining value

In real terms, the minimum wage generally rose until 1968, then stabilized in the 1970s, and has fallen sharply since 1979. The real wage is now 20 percent less than it averaged in the 1970s and is a third less than it was at its peak in 1968 (Figure 2).

(Figure 2 here)

Figure 2. The real value of the minimum wage has fallen during the 1980s



Source: U.S. Bureau of Labor Statistics

In the 1950's and 1960's, Congress set the minimum at roughly 50 percent of the average wage paid in private industry, while in the 1970's the minimum wage rate dropped below this targeted level. The minimum wage has now slipped below 40 percent of the average hourly wage in private, nonagricultural employment for the first time since 1949. An hourly rate of $4.37 is needed to restore the minimum wage to 50 percent of the average private wage of nonsupervisory workers.

The current minimum wage of $3.35 per hour provides a full-time full-year worker an annual income of $6,968. The estimated 1986 poverty threshold for a family of three is $8,827, requiring full-time full-year work at a wage of $4.24 per hour to escape poverty. Unless you are a worker living alone, the minimum wage is now a poverty wage. In contrast, throughout most of the 1960's and the 1970's, the minimum wage provided sufficient income to bring a family of three out of poverty.

Because of low wages, many work full time but fail to escape poverty. Of the 22.2 million people over age 15 counted as poor in 1984, 9.1 million worked, including 2.1 million with full-time full-year jobs who were still unable to escape poverty. An estimated 3.5 million more individuals live in impoverished households where at least one member worked full time all year.

Administration advocacy of a subminimum wage for youth has precluded consideration of the erosion of the basic minimum wage. Youth unemployment, particularly among black teenagers, is indeed a severe problem, but a lower minimum wage is not the solution to their plight. Youth wage subsidy programs have met with limited success. Youths most in need of jobs often lack basic skills and tend to live in areas with severe job deficits where business expansion is unlikely. A subminimum wage for youth would also

displace adult workers and would lower the income of youths working at the minimum wage.

The minimum wage should be restored to a reasonable level through a series of incremental increases until it is equal to half the average hourly rate in private industry. The minimum wage should then be indexed to prevent future sagging of the wage floor. A series of small increases facilitates business and worker adjustments.

Strengthening the minimum wage offers the federal government an opportunity to assist the working poor without raising the federal deficit. An adequate minimum wage would help encourage and make it possible for the poor to work their way out of poverty, it would raise the income of millions of other Americans, and it would reaffirm our society's commitment to the value of work.

Health and Safety

With the passage of the Occupational Safety and Health Act of 1970, the federal government assumed the major responsibility for regulating safety and health hazards in the workplace. The law established the Occupational Safety and Health Administration (OSHA) in the Labor Department and charged the agency with setting and enforcing workplace safety and health standards. In its short existence, OSHA has had a beneficial impact on working conditions, but has been the subject of much controversy.

Prior to 1970, the federal role in regulating workplace health and safety was minimal. The dangers of unregulated workplaces in the early 20th century led the states to establish workers' compensation programs as well as some workplace standards. State intervention proved inadequate,

and rising public concern with workplace hazards spurred first President Johnson and then President Nixon to introduce comprehensive safety and health legislation, with Nixon signing the OSH Act into law on December 29, 1970.

OSHA has clearly had its positive influences. The agency has promulgated necessary and effective health standards for worker exposure to asbestos, vinyl chloride, cotton dust, and many other health hazards. The cotton dust rule illustrates OSHA's capability to reduce serious occupational hazards in a manner that both enhances the safety and health of workers and improves productivity. An Office of Technology Assessment study estimated that of 500,000 textile workers potentially exposed to large amounts of cotton dust, 84,000 active workers suffered from acute byssinosis, and 35,000 employed and retired workers were disabled from dust-related diseases.

OSHA established strict cotton dust standards in 1978; to comply with the standards, the textile industry installed new technology. As a result, in four years the number of employees exposed to health risks was cut almost in half and, in part because of this new technology, the textile industry led the manufacturing sector in productivity gains.[3]

OSHA administrators annually inspect 4 percent of the nation's workplaces. Although significant fines can be assessed, in practice fines are relatively small: the average proposed penalty per inspection was $83 in fiscal 1983. The low chance of being inspected combined with the small fines provide little incentive for pre-inspection compliance. Nevertheless, OSHA enforcement has had beneficial effects on working conditions. Abatement of violations is likely where inspections occur, inspections are targeted on dangerous workplaces, and the establishment of

inspections based on worker complaints, without the threat of employer retribution, has facilitated the detection of workplace hazards. OSHA also finances on-site consultations in which state officials or private consultants provide employers with a confidential evaluation of the health and safety of a workplace and offer suggestions for abatement.

OSHA's very existence has raised the level of occupational safety and health awareness among both employees and employers. Firms may improve working conditions either out of their own increased concern generated by this awareness or because of public pressure. Large companies have responded to OSHA regulations by establishing a cadre of safety and health personnel with a vested interest in these issues. As a final benefit, in conjunction with the National Institute for Occupational Safety and Health, OSHA has advanced the knowledge of occupational hazards, no small accomplishment in this age when technological changes and the introduction of new chemicals constantly create new health hazards in the workplace.

Despite these accomplishments, OSHA has long been the subject of detractors. Much of the criticism dates back to start-up problems that could be expected for a new agency with a broad mandate. In particular, OSHA has been critized for its initial adoption of trivial, outdated, or unnecessarily cumbersome standards. Many of these standards have, however, been weeded out, including 900 that the Carter administration eliminated in 1978. OSHA regulations also have been criticized for adding to business costs, but the funds -- $4.9 billion in 1983 -- business devotes to improving workplace health and safety are dwarfed by the aggregate cost of occupational injuries and illnesses. The National Safety Council estimated that the price tag of work-related injuries in 1983 amounted to $33.4 billion. This figure, which does not include non-pecuniary damages or any

health-related costs, was nearly seven-fold the total capital spending by businesses on workplace health and safety.

Neither standards nor enforcement

OSHA's budget has declined since fiscal 1981 and its personnel has been cut 25 percent, but the nature of the agency has changed primarily because of a different approach in administering the law. The Reagan administration has pursued some refinements that may have strengthened OSHA. It directed efforts to better target OSHA inspections and continued to emphasize the on-site consultation process that began during the Carter years. For the most part, however, actions taken by the Reagan administration have undermined OSHA's effectiveness.

OSHA's standard-setting record since 1981 has been dismal. While nine new health standards that strengthened worker protection were established during the four years of the Carter administration, in the first five years of the Reagan term six health standards were issued through the standard rulemaking process, only two of which actually strengthened workplace standards (Table 2). The respirator fitting and hearing conservation standards revised earlier rules, allowing employers more flexibility in compliance, while the coal tar pitch volatiles standard modified a previous standard by excluding coverage of petroleum asphalt. The cotton dust standard also revised an earlier rule. Of the two remaining standards, the ethylene oxide standard was issued only after an appeals court ordered OSHA to expedite its rulemaking process and the hazard communication standard, though far-reaching, is weaker than the "hazard identification" standard proposed in the last days of the Carter administration that was revoked by the Reagan administration.

Table 2. OSHA health standards

(1972-1985)

OSHA	regulation	Final standard
1.	Asbestos a,b/	6/07/72
2.	Fourteen carcinogens a/	1/29/74
3.	Vinyl chloride a/	10/04/74
4.	Coke oven emissions	10/22/76
5.	Benzene a/	2/10/78
6.	DBCP a,c/	3/17/78
7.	Inorganic arsenic	5/05/78
8.	Cotton dust/cotton gins	6/23/78
9.	Acrylonitrile a/	10/03/78
10.	Lead	11/14/78
11.	Cancer policy	1/22/80
12.	Access to employee exposure and medical records	5/23/80
13.	Occupational noise exposure/hearing conservation	1/16/81
14.	Lead — reconsideration of respirator fit-testing requirements	11/12/82
15.	Coal tar pitch volatiles--modification of interpretation	1/21/83
16.	Hearing conservation--reconsideration	3/08/83
17.	Hazard communication (labeling)	1/25/83
18.	Ethylne oxide	6/22/84
19.	Cotton dust revision	12/13/85

Source: Office of Technology Assessment and OSHA.
a/ Subject of an emergency temporary standard.
b/ Emergency standards were issued for asbestos in 1971 and 1983.
c/ 1,2 - dibromo-3-chloropropaine.

OSHA enforcement has eroded in recent years. Although an emphasis on cooperation between OSHA officials and businesses has led to a drop in the number of contested citations, since the number of follow-up inspections also has declined, it is impossible to verify whether abatement has indeed occurred. In addition, because penalties have fallen substantially, the economic incentive for compliance in the absence of an inspection has declined to the point of being trivial. There also has been a decline in inspections in response to worker complaints.

The increased role of the Office of Management and Budget, an agency inclined to downplay benefits but emphasize costs in OSHA decisionmaking, has been detrimental to OSHA's effectiveness. Congressional hearings have led to charges that OMB officials, after meeting secretly with employers, undermined OSHA regulations in areas such as hazard communication and commercial diving.[4] OMB interference with needed OSHA standards is likely to continue since James Miller, director of OMB, is an avid proponent of deregulation and a committed critic of OSHA.

Developments at OSHA in late 1985 do, however, hold some promise that the agency may assume a more positive role during Reagan's second term. The administration announced a modification of its inspection targeting practice in response to criticism that its old approach eliminated the incentive for many employers to comply with health and safety standards. OSHA also proposed two workplace standards regulating the use of benzene and formaldehyde. These regulations suggest that OSHA may become more active in issuing health standards, even though the benzene and formaldehyde standards were issued under congressional and court pressure, and though it was alleged that OMB was responsible for relaxing the

proposals favored by the Labor Department.[5] It is also likely that Secretary of Labor William Brock will counteract OMB pressure more effectively than his predecessor.

Safety and health hazards in the workplace persist. An estimated 25 workers die daily from workplace injuries and another 2.5 million to 11.3 million workers annually suffer nonfatal occupational injuries. Some 60,000 chemical substances are unregulated; not all, but surely some of these chemicals should be the subject of OSHA standards. The underlying rationale for a centralized agency to pull together research, establish uniform standards, ensure enforcement, and disseminate health and safety information, remains sound. With more vigorous administration, OSHA can help ensure future progress in advancing workplace health and safety.

Equal Employment Opportunity

The federal government has played a central role in this nation's efforts to root out an entrenched system of discrimination in employment and other aspects of American life. Continued federal efforts are necessary to sustain the nation's progress toward the elusive goal of equal opportunity for advancement. Past efforts have raised the income and improved employment opportunities for both minorities and women. In turn, the more effective utilization of these groups boosts the wealth and productivity of the nation.

The federal court decisions of the 1950s outlawed segregation, but in the absence of legislation prohibiting discrimination in the workplace, employers continued to use discriminatory hiring and promotion practices. It was not until the 1960s that a series of presidential executive orders and federal legislation advanced the cause of equal employment opportunity.

Most notable, Title VII of the 1964 Civil Rights Act proscribes discrimination on the basis of race, color, religion, sex, or national origin in hiring, compensation, and promotion. The Equal Pay Act of 1963 prohibits gender-based pay differentials. Also, in 1965 President Johnson issued Executive Order 11246 which promotes equal employment opportunity in federally contracted jobs. Subsequent legislation prohibits discrimination against older workers, veterans, and handicapped workers.

The Equal Employment Opportunity Commission (EEOC) administers Title VII. Initially, the EEOC was empowered to seek compliance with Title VII standards only through voluntary agreements, but while overt discriminatory practices declined substantially after the passage of the Civil Rights Act, institutional discrimination continued. The landmark 1971 Supreme Court decision in Griggs v. Duke Power Co. opened the way for federal activity combating institutional discrimination. The Court ruled that Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." In the 1970s the federal equal employment opportunity efforts were strengthened by the use of class action suits and by the use of affirmative action to help remedy discrimination.

Many factors affect employment opportunities, making the task of isolating the effects directly attributable to federal equal employment activities a difficult one. Still, a number of studies have concluded that the federal equal opportunity drive has contributed to ameliorating wage and employment discrimination.[6] More generally, although progress has been limited by shifting economic currents and time lags in acquiring appropriate education and skills, since the early 1960s blacks and women have made substantial gains in the job market, moving into better-paying and higher-status jobs. Although this progress cannot be directly traced to

government policies, federal intervention has helped create an employment environment conducive to improvement.

Between 1960 and 1985 the proportion of blacks employed as managers, professionals, and craft workers rose considerably, while the proportion employed in service work and as laborers fell. Women have also experienced employment gains. Between 1964 and 1985 women made significant inroads in the growing professional and managerial occupations. In 1985, a manager was twice as likely to be a woman as in 1964.

The improved occupational status of blacks and women has translated into earnings gains for these groups, as follows:

Wage and salary ratio (full-time, year-round workers)

	Women/men	Black men/white men	Black women/white women
1964	0.60	0.59	0.62
1984	0.63	0.68	0.92

(The 1964 figures for blacks include blacks and others.) Younger blacks and younger women have benefited more from federal antidiscrimination efforts than their older counterparts.

Passing a law does not instantly change established institutions and ingrained attitudes. Yet 20 years of federal equal employment legislation has slowly but significantly altered the personnel policies of employers and unions. Most large companies have institutionalized their equal employment efforts, assembling personnel staffs to comply with affirmative action requirements. Many employers, both private and public, now support goals and timetables, preferring reforms that are specific and involve minimal paperwork. The risks of noncompliance bring other employers in line with social policy and legal requirements, even if they are not supportive of federal equal employment goals.

Weaker enforcement, less commitment

Since 1981 federal agencies have downgraded the enforcement of equal employment opportunity policies affecting women and minorities. Congress cut the EEOC's budget by 20 percent in real terms from 1980 to 1985 while funding for the Office of Federal Contract Compliance Programs (OFCCP) was reduced by one-third. The EEOC has been half as successful at achieving settlements and has been twice as willing to reject cases, but its case backlog has risen.

EEOC enforcement statistics (fiscal year)

	1980	1985
Settlement rate	32.1%	14.4%
No-cause rate	28.5%	56.2%
Backlog(thousands)	37.7	44.9

The Reagan administration has taken a dramatically different philosophical approach to promoting equal employment opportunity. It has maintained that only proven individual victims of discrimination should receive relief and has disdained using class-based relief. Affirmative action approaches, using goals and numerical approaches to remedy discrimination, have come under sharp attack.

The administration has implemented its new approach to equal employment opportunity both by changing its own administrative policy and by arguing against affirmative action plans in court. In 1985 the EEOC's Acting General Counsel instructed the commission's regional attorneys not to use numerical remedies in settlements. Since the summer of 1985, the administration has also been embroiled in controversy over the Justice Department's desire to alter Executive Order 11246, the federal government's most important affirmative action program. The Secretary of Labor, along with other cabinet officials and numerous members of Congress

from both parties, have opposed abandoning the order. The outcome of this dispute will have direct bearing on the future of affirmative action as a mechanism for promoting equal employment opportunity.

The Justice Department has urged some 50 state and local government affirmative action program administrators to reopen and reexamine court-approved consent decrees containing goals and timetables. Officials of some cities -- including Boston, Chicago, Los Angeles, Miami, Philadelphia, and San Francisco -- replied that their programs were working well and federal intervention was, therefore, not warranted. The Justice Department has also weighed in against affirmative action plans in court. Business Week editorialized in November of 1985: "By pushing hard to alter the current procedures of affirmative action, Meese has brought conflict where harmony prevailed earlier. Both of the major players in affirmative action, business and civil rights groups, find the present system workable. Only the Attorney General is calling for change."[7]

The EEOC should step up its pursuit of violators of equal employment opportunity laws. The federal government also should reaffirm its commitment to attacking systemic and institutional discrimination. The federal government has played an active role in offsetting and redressing past discriminatory practices. The long history and experience of this nation's struggle against injustice demonstrate that without positive programs to correct past wrongs, the goal of guaranteeing women and minorities equal opportunities in the workplace may be further delayed.

Fifty years after the enactment of the NLRA, some 35,000 collective bargaining agreements are now in effect -- many of which are decades old -- and successful bargaining is conducted in virtually every major industry. Labor relations in the public sector, although not governed by the NLRA, closely follow its basic principles.

Collective bargaining has significantly improved the wages and working conditions of unionized and nonunionized workers. Unions boosted the wages of organized workers by 20 to 30 percent above unorganized workers in the 1970s.[8] Other benefits of union representation include increased leisure, better medical coverage, more secure pensions, and collectively bargained grievance and arbitration practices that promote the rights of individuals in the workplace.

Although unionized workers comprise less than one-fifth of the workforce, the benefits of collective bargaining spill over to unorganized workers. In looking for a standard by which to set wages, employers make extensive use of industry or area wage surveys which, in turn, reflect union-bargained increases. Employers practicing positive labor relations closely follow collectively bargained wage and benefit increases to forestall union organizing drives. Non-union employers incorporate some of the work rules and personnel practices found in union shops. Unions also have benefited nonunion workers by lobbying for legislation that grants all workers protections such as equal employment, safe and healthy workplaces, and secure pensions.

Shifting policies

The direction of decisions by the National Labor Relations Board (NLRB), not surprisingly, typically reflects the views of the

administration in power. The current board is no exception; its chairman had charged the NLRB with acting during the previous administrations as a "legal aid society and organizing arm" for unions.[9] Recent administrative policies have led both to a substantial rise in the backlog of NLRB cases and to a change in the nature of NLRB decisions.

Long delays and a substantial case backlog impair a union's chances to win a representation election and force a worker fired for union activities to bear the costs of unemployment while awaiting an NLRB decision. The backlog has more than doubled between the end of fiscal 1980 and February 1986.

Backlog at end of fiscal year.

1980	535
1982	842
1984	1313
1985	1196
1986 (February 1)	1184

Board policies regulating employer free speech and the duty to bargain in good faith have made it more difficult for union organizing efforts. The Reagan administration's NLRB expanded freedom of employer action with respect to employer interrogation of union supporters. (Rossmore House, 269 NLRB 198 (1984)) Earlier board decisions held that probing into employees' union sentiments might affect their future status and ruled that the action was coercive. (PPG Industries, 251 NLRB 1146 (1980)) The NLRB also makes initial decisions regarding which issues must be bargained over in labor-management negotiations. If an issue is ruled a "mandatory" subject of bargaining, the union's hand is strengthened. The Reagan board has

limited the employer's obligation to bargain over the terms and conditions of employment. (Otis Elevator Co., 269 NLRB 162 (1984); Milwaukee Spring Div. of Illinois Coil Spring Co., 268 NLRB 87 (1984))

Policy developments in the 1980s cannot, however, be blamed for the continued erosion of union strength since World War II. This erosion is due not only to previous federal policy changes regulating collective bargaining and union representation, but to industrial shifts, demographic changes, ineffective union strategies, and aggressive anti-union campaigns by employers. Nevertheless, current NLRB policies make it more difficult for unions to regain their strength and for workers to secure their rights.

In the past two decades, Congress has increasingly turned toward more direct intervention to protect and advance the interests of the labor force. Occupational health and safety, equal employment opportunity, and pension policies did expand federal protection, but are not an effective substitute for workers banding together to advance their interests in the workplace. Self-organization establishes the necessary institutional arrangements for workers to monitor the application of federal regulations, to protect the rights of individuals in the workplace, and to negotiate agreements suitable to the needs of specific workplaces. These objectives would be promoted by NLRB policies more responsive to the legitmate interests of workers.

Private Pensions

Pensions supplement social security as a source of retirement income. Social security serves as the basic floor of protection to retired or disabled workers, or to surviving spouses, while pensions provide additional income that brings retirement income up to levels that more

nearly reflect the individual worker's preretirement living standard. Nearly a third of all retirees currently receive pensions and almost half of all active workers are covered by a public or private pension plan. The federal government has played an active and leading role in strengthening the pension system through tax incentives that promote pensions and by guaranteeing that employees receive promised pensions.

Since the 1920s the federal government has provided tax incentives for employers to establish voluntary pension plans. Tax law changes in 1942, provisions of the 1946 Taft-Hartley Act, a 1949 Supreme Court ruling that pensions are subject to collective bargaining, and legislation seeking to curb the abuse of retirement funds by pension managers all contributed to a three-fold increase in pension coverage during the 1950s and 1960s. By 1970 nearly 30 million workers were covered by private pensions.

Widespread employee complaints that they were unable to qualify for benefits even after long years of service and that even eligible employees lost all anticipated retirement benefits when their employers' business failed led to the passage of the Employee Retirement Income Security Act (ERISA) of 1974. ERISA sets a variety of federal standards safeguarding the pension rights of active workers and retirees and spells out the obligations of plan sponsors and trustees. The act also regulates the tax status of pension funds. ERISA does not requre employers to adopt employee pension plans, but where voluntary plans are established, employers must comply with extensive reporting requirements, fiduciary obligations, and minimum standards of coverage, participation, vesting, and benefit funding.

Three significant pieces of pension legislation have been passed since 1974. The Multiemployer Pension Plan Amendment Act of 1980 addressed the problem of widespread withdrawal from multiemployer plans by employers in

troubled industries. The Economic Recovery Act of 1981 expanded the tax incentives for individuals to save for their own retirement. The Retirement Equity Act of 1984 corrected some of the flaws in the pension system that prevented women and spouses of pension recipients from receiving adequate benefits.

Pension plans are now an integral aspect of the income security system for the majority of above-median earners. In the decade following ERISA's enactment, the number of pension plans has nearly doubled from 423,000 to over 800,000, and plan assets have risen from $250 billion in 1974 to an estimated $1 trillion in 1985 ($458 billion in 1974 dollars). Moreover, workers are better protected if their pension plan terminates than they were prior to 1974. The use of individual plans, such as individual retirement accounts (IRAs) or Keogh plans for the self-employed, has also risen sharply.

Poor targeting, termination abuse

In recent years two growing problems with the pension system have not been addressed. First, the generous tax incentives for individual plans have disproportionately benefited those already covered by employer pension plans. ERISA established tax incentives for individual pension plans for those ineligible for the tax advantages provided under employer plans, but nearly half of all workers with IRAs in 1982 had vested pension rights, while only 12.1 percent of those without pension coverage had IRAs. Higher income individuals, those in the best position to save a share of their income regardless of tax incentives, contribute the most to IRAs. Fifty-nine percent of individuals earning over $50,000 contributed to an IRA in 1982, compared to only 10 percent of people earning less than $20,000.[10]

Second, an increasing number of employers are terminating underfunded pensions plans. Because the Pension Benefit Guarantee Corporation (the federal agency funded through employer termination insurance premiums that, as its name implies, guarantees pension benefit payments) can only collect up to 30 percent of a firm's net worth in the case of a plan termination, some employers terminate their plans and "dump" their pension liabilities on the PBGC when their long-term pension obligations exceed 30 percent of the firms' value. The PBGC estimated that such employer actions have accounted for about a third of its growing deficit:[11] it rose to $1.2 billion in 1985.

Tightening government regulation of pension plans is a tricky undertaking. Tighter restrictions may strengthen existing plans but they may discourage employers and individuals from voluntarily establishing new plans. Nevertheless, Congress should amend the pension law to prevent employers from dumping their problems on the PBGC and to focus individual tax incentives on lower and middle income workers who lack pension coverage. A law passed in April 1986 as well as pending tax legislation take positive steps in these directions.

Restoring Federal Worker Protections

In the past 50 years, federal policies have substantially raised the income of American workers and improved the quality of their lives. These efforts have:

> — helped workers find jobs and provided unemployment insurance to workers who are forced into ideleness for factors beyond their control;
>
> — raised the income levels of low wage workers, established and enforced needed health and safety standards, and combated employment discrimination;
>
> — provided the framework for guaranteeing workers the right to improve their working conditions through collective bargaining; in turn, union standards and labor lobbying benefited unorganized workers;
>
> — established guidelines for pensions that supplement the income of the elderly.

Federal workplace interventions are now significantly less effective than they were in 1981. Federal Government funding of employment and training has been cut by more than half. Only one of every three unemployed persons received unemployment benefits. For workers with jobs, minimum wage employment provides 26 percent less income, and the continued erosion of unions has contributed to a drop in wage increases for all workers. Much-needed occupational health standards are not being issued, and existing standards are not being enforced. Workers struggling against ongoing discrimination cannot count on federal support.

Many of the required changes to restore long-standing federal health and safety protections, equal employment opportunities, and the right to bargain collectively can be accomplished through administrative actions that will not affect federal costs. Congress, through the oversight process, can help bring about these changes.

Some of the needed modifications of worker protections would require legislation. Raising the minimum wage to traditional levels of support would increase the costs to some employers, but it is a mechanism by which the government can assist the working poor without adding to the federal deficit. Needed changes in pension policy may actually raise federal revenues.

Other legislative efforts to restore worker protections would entail some rise in federal expenditures. Increasing federal training and employment efforts as well as federal aid to job losers are the most prominent examples. Some of the job training expenditures will, however, be recouped because of the boost in productivity and reduction in welfare expenditures. The requisite level of support for job training and UI should

be considered in light of the objective of sharing the burden of on-going economic dislocation.

Although federal regulations on behalf of workers have deteriorated in the past few years, the basic structure of these regulations remain intact. These regulations, for the most part, are well-designed and have provided substantial benefits. The protective net for workers exists. The President and Congress should take action to see that it is appropriately repaired.

Notes

1. Robert Taggart, A Fisherman's Guide: An Assessment of Training and Remediation Strategies (Kalamazoo, MI: The W.E. Upjohn Institute for Employment Research, 1981), pp. 280-94; George Farkas, et al., Impacts from the Youth Incentive Entitlement Pilot Projects: Participation, Work, and Schooling Over the Full Program Period (New York: Manpower Development Research Corporation, 1982).

2. Congressional Budget Office, Promoting Employment and Maintaining Incomes with Unemployment Insurance, March 1985, p. 21.

3. Ruth Ruttenberg, "Compliance with the OSHA Cotton Dust Rule: The Role of Productivity Improving Technology," in U.S. Congress, Office of Technology Assessment, Preventing Illness and Injury in the Workplace, Volume II-Part C: Working Papers (Washington: Government Printing Office, 1985), pp. 32, 49, 50, 99.

4. U.S. Congress, House Committee on Governmental Operations, 98th Congress, 1st Session, OMB Interference with OSHA Rulemaking, House Report No. 98-853, December 1, 1983, and U.S. Congress, House Committee on Government Operations, Subcommittee on Manpower and Housing, 97th Congress, 2d Session, Hearings, March 11, 18, and 19, 1982.

5. Peter Perl, "OSHA Offers New Rules on Worker's Exposure to Benzene, Formaldehyde," The Washington Post, December 4, 1985, p. A25.

6. U.S. Department of Labor, Office of Federal Contract Compliance Programs, Employment Patterns of Minorities and Women in Federal Contractor and Noncontractor Establishments (Washington: Government Printing Office, 1984); Herbert Hammerman, A Decade of New Opportunity: Affirmative Action in the 1970s (Washington: The Potomac Institute, 1985).

7. "Ed Meese's Right to be Wrong," Business Week, November 4, 1985.

8. Richard B. Freeman and James L. Medoff, What Do Unions Do? (New York: Basic Books, 1984), p. 3.

9. Richard Corrigan, "Unions Say Labor Board's Hostility Compounds Their Economic Hard Times," National Journal, July 23, 1983, p. 1542.

10. Employee Benefits Research Institute, "Individual Retirement Accounts: Characteristics and Policy Implications," EBRI Issues Brief, No. 32, July 1984, Table 3.

11. Janet Hook, "Established to Resolve Crisis, Federal Pension Corporation Finds Itself in Financial Straits," Congressional Quarterly, March 10, 1984, p. 561.